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*John F. Alexander*







# English Ruling Cases

ARRANGED, ANNOTATED AND EDITED

BY

ROBERT CAMPBELL, M. A.

OF LINCOLN'S INN

ASSISTED BY OTHER MEMBERS OF THE BAR

WITH AMERICAN NOTES

BY

IRVING BROWNE AND LEONARD A. JONES

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VOL. XXVI.

INDEX AND TABLE OF CASES

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ROCHESTER, N. Y.

THE LAWYERS CO-OPERATIVE PUBLISHING CO.

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## PREFACE.

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Matthew Green in his poem "The Spleen," written early in the Eighteenth Century, describes:

"Law grown a forest where perplex  
The byeways and the brambles vex:  
Where the twelve verderers\* every day  
Are changing still the public way.  
And if we miss the way and err,  
We grievous penalties incur:  
And wanderers tire and tear their skin,  
And then get out where they got in."

If this was so when Green lived, the description is much more true to-day, when case law and statute law have multiplied a hundred-fold,—when new provinces, such as mercantile law, insurance, company, and patent law, have been added to the common law, and when the Anglo-Saxon race has spread to all parts of the world. To this legal labyrinth there is but one clue—the clue of principle. "Legal principle," as Professor Jethro Brown well said in his address on the "Purpose and Method of a Law School" (Law Quarterly Review, Jan., 1902), "legal principle is the thing of supreme importance and value." Led by this guide, from the "mists and errors and tempests of the vale below," to use Lord Bacon's words, we ascend the mountain of truth, and from its vantage ground can survey the whole domain of law lying mapped out at our feet. But knowledge of principle, this wide vision, how are we to attain to it? Professor Brown again gives us the answer, "*The study of case law is the one way to know the law.*" This is his deliberate opinion, and it is shared by most of those who have thought the matter out. America has now, in large measure, made the study of decided cases the principal basis of instruction from the beginning of the course, and in matters of legal education America leads the way. What are the alternatives? There is the text-book—or its oral counterpart, the

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\* The number of judges in Green's day was twelve.

lecture. There is the digest. There is the moot. Undoubtedly a legal treatise, like Lord Lindley's on Partnership, or Sir Frederick Pollock's on Contracts, or Mr. Justice Story's on the Conflict of Laws, is instructive and illuminating to a high degree. So, too, to the practitioner on the track of cases, a digest, is invaluable as collecting and arranging, in alphabetical, or some other intelligible order, "the codeless myriad of precedent." But in the text-book the law is too condensed for the immature student; in the digest, there is wanting the thread of principle to string together the loose units. The moot is merely an acted case. In the case law method of teaching, exemplified in "Ruling Cases," we have the advantages of the text-book and the digest combined, with something superadded. The law in cases is teaching by examples — the simplest way of all. Each leading or ruling case is an object lesson, inculcating and illustrating just one principle of law. It is indeed for that very reason that it is chosen, because it sets forth this one principle most clearly and comprehensively, disengaged from any special circumstances. The student can thus concentrate his whole attention upon it. First, there are the facts, so far as material, which give rise to the claim, succinctly stated. Then the question of law is argued whether those facts disclose a legal right of action; and authorities are cited, one side, by counsel affirming, the other side denying the right; and, if well argued, not only the rule, but the reason of the rule, is elicited and emphasized. Then the judge, as judicial arbitrator, declares the law after a critical appreciation of principle and precedent. In this way the leading principle on some branch of law is impressed indelibly on the mind, and it is helped often by an interesting "setting." It may be Lord Barnard's unroofing of Raby Castle to spite his heir, associated with the doctrine of equitable waste, or the romance of the young Englishman who married a Matabele girl with native ceremonies, or the perversity of the Six Carpenters who would not pay for their liquor.

When once we have clearly grasped such a ruling principle, we can easily go on and follow the various extensions of the principle, the exceptions and qualifications each again argued out and illustrated in a concrete case. But the best proof of the popularity and success of the method is its growing adoption. Thus, besides the classic works, Smith's *Leading Cases in Common Law*, and White and Tudor in *Equity*, we have had Tudor's *Real Property and Conveyancing Cases*, Tudor's *Cases in Commercial Law*, Finch's *Cases on Contract*, Warburton's *Criminal Cases*, Goodeve's

Patent Cases, Shirley's Modern Common Law Cases, Brett's Modern Equity Cases, and many more American and English "Ruling Cases" carry out this method of case law teaching systematically, applying it not fragmentarily to isolated portions of law, but comprehensively and completely to the whole field of American and English case law. The specially interesting and instructive feature in this work is in the comparison it affords, in the English and American notes, of the points of agreement and difference between the two systems. These differences oblige the student, and for that matter, the mature lawyer, to think, and to weigh the rationale of the act or occurrence. Thus,—to give a few illustrations.

In England, if an employer who has a duty cast upon him by statute (as *e. g.* to fence dangerous machinery), neglects to do so, and an employee is injured in consequence, the employee may recover compensation, though he knew of the employer's neglect; but in America this is not so. America in fact reads, for "*volenti non fit injuria*," "*scienti non fit injuria*."

The law of waste has been modified in America, to meet the exigencies of a young and growing country. If the land is wholly wild and uncultivated, the tenant for life may clear part of it for purposes of cultivation; but he must leave wood and timber sufficient for the permanent use of the farm.

A legatee who accelerates the death of his testator disentitles himself by English law to the benefit of the legacy; it will not permit him or his estate to profit by his wrongdoing. Certain American decisions hold that the law has affixed to such a crime its proper penalty, and that it has no right to go farther and add to it forfeiture.

In England, when a testator bequeathes a legacy with a gift over if the legatee alienes, the condition is void for repugnancy. In America it is not. Here English law is technical; American law rational.

In England the change in the character of a neighborhood is no answer to an action for an injunction to restrain a breach of covenant. This is not so in America, when the purpose of the restriction is gone.

The English courts have held that a telegraph company is not liable to the person to whom a message is sent, for mistake or misdelivery, even though negligent. In the United States, telegraph companies are treated as public servants, and are held to a high degree of diligence and a strict discharge of duty, so much

so that, in some States, any person beneficially interested in a message can maintain a suit for damages for errors or failure to deliver.

American law altogether repudiates the maiming or killing of mere trespassers by traps, spring guns, or ferocious dogs, or the destruction of another's trespassing animals thereby or by poison. Under English law, notice makes the difference.

"Market overt," so large a chapter in the history of English law, finds no place in American law.

These are only a few out of a great number of instructive differences.

Incidentally, in these volumes, we come upon a bit of history or antiquarianism or some *jeu d'esprit*, showing all the brighter for a sombre background. For instance, there is Sir George Rose's celebrated epitaph on Preston, the great conveyancer, wittily reproducing the various terms of art familiar to the lawyer:

"Stern death hath cast into abeyance here  
A most renowned conveyancer:  
Then lightly on his head be laid  
The sod that he so oft conveyed.  
In certain faith and hope he sure is  
His soul, like a scintilla juris,  
In nubibus expectant lies,  
To raise a freehold in the skies."

There, too, under *Spes Successionis*, the student will find a reference to the curious bargain for a horse reported in 1 Lev. 111, temp. Charles II, in which the purchaser agreed to pay a barley-corn for the first nail in the horse's shoe, two for the second, and so on, doubling it for the whole thirty-six; with the result that he made himself liable to pay 500 quarters for an animal worth £8.

In the volume dealing with *Perpetuities*, and the rule against them as affecting executory devises, occurs the case of *Cadell v. Palmer*. A literary interest attaches to this case, because it is identified, in the tradition of the Chancery Bar, with the suit of *Jarndyce v. Jarndyce*, in Dickens's well-known description of the old Court of Chancery. "The only odd thing about the description," says Mr. Campbell, "is that the absurdity of the procedure is in no way exaggerated. Exaggeration would be impossible. In the old procedure, when an estate was thrown into Chancery, or, to employ the technical expression, administered by or under the direction of the court, every act of administration was carried out in detail by a professional army under the direction of the Chan-

cellor or Vice-Chancellor with all the paraphernalia of the court. There was a petition setting forth at enormous length the will and all subsequent proceedings, and the reasons for the proposed expenditure of a sum perhaps insignificant in comparison with the costs of the proceedings. The statements in the petition were echoed with equal prolixity by affidavits of trustees and solicitors and experts. Similar proceedings in the same suit have gone on from time to time from the earliest memory of the oldest judge, in the memory of the existing Bar, and perhaps, in some sequestered chambers sadly shorn of their former dignity, are going on still." It is a curious verification of Mr. Campbell's surmise, that only a few days since, a firm of traders received from the aforesaid court a belated dividend on the estate of a testator who died a few days after the battle of Waterloo.

In Volume XXIV, at p. 135, we find the masterly speech of Lord St. Leonards, in the House of Lords, in *Egerton v. Brownlow*, dealing with executed and executory limitations in a settlement and conditions against public policy. The subject is not a popular one, but what an intellectual feat they are, these twenty-six pages of closely reasoned argument! No wonder Lord St. Leonards was the pride of the English Bar, and that when he took his seat as Chancellor in 1852, in the old Hall of Lincoln's Inn, an unparalleled crowd assembled to honour him.

Mr. Campbell and his learned American colloborateurs, Mr. Irving Browne and Hon. Leonard A. Jones, have achieved a unique work, of the highest value, and are to be heartily congratulated on their success.

In the present volume the utmost care has been taken, both to make the Tables of Cases accurate and complete, and to present such a thorough and exhaustive Index as will, at a glance, guide the reader to every case and note in the preceding volumes of this series.

EDWARD MANSON.

8, OLD SQUARE, LINCOLN'S INN,  
LONDON.

## AMERICAN PREFACE.

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The task assigned to me, of revising from the American standpoint, the Index prepared by MR. MANSON, has required thorough examination of every volume of this series. I finish it with the conviction that "English Ruling Cases" will have peculiar value for the bench and bar of the United States. What may be called the encyclopædic method of grouping selected cases under topical heads is here applied for the first time to a set of reports. English decisions are excellent material for such a method, because (in addition to their general soundness) they so often exhibit many different phases of the questions at issue.

Mr. Campbell's editorial work, as shown in the selection of cases, in the English notes, and in the luminous "Rules" of law in which he summarizes groups of decisions, deserves very great praise. Having had some share in preparing the American Notes, I am debarred from praising them,—but may properly say that their main object has been not so much to present legal monographs, as to cite decisions following the lines of the main cases, from a wide range of our different state and national jurisdictions, thus facilitating further investigation.

As to this final volume, I would especially call attention to the fact that MR. MANSON has saved time and trouble for the reader by subdividing the main topics of the Index and arranging references alphabetically under each heading with great fulness of detail, and with abundant cross-references — merits much too rare in law-book indexes.

JOHN M. GOULD.

BOSTON, MASS., *Sept.* 15, 1902.

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# THIRD CIRCUIT COURT

1876, 1877

UC SOUTHERN REGIONAL LIBRARY FACILITY



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